IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB-22-2025 (O&M)
Reserved on: 04.07.2025
Date of decision: 08.07.2025

M/S VIJAY RICE AND GENERAL MILLS LTD AND ANR.

..Appellants

Versus

PUNJAB STATE CIVIL SUPPLIES CORPORATION LIMITED AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present: Ms. Alka Chatrath, Advocate
with Nishant Maini, Advocate
Mr. Ritik Kapur, Advocate
for the appellants.

ANIL KSHETARPAL, J.

I. ***Brief Facts of the case:***

1. Through this appeal filed under Section 37 of Arbitration and Conciliation Act, 1996 (in short '1996 Act') read with Section 13 of the Commercial Courts Act, 2015, the appellants assail the correctness of the judgment passed by the Commercial Court, Chandigarh on 24.03.2023, while dismissing their petition under Section 34 of the '1996 Act'. Along with the appeal, the appellants have also filed an application seeking condonation of delay of 26 days in filing the appeal, whereas, 652 days in refiling the appeal, which shall be examined if required; in the later part of this judgment.

2. An arbitration award was passed on 04.05.2016 against the appellants and in favour of the respondents for an amount of Rs.4,94,93,405/- along with interest accrued as on 13.03.2004, with future interest at the rate of 13% per annum with effect from 14.03.2004 till the date of realization.

3. The appellants have not filed a copy of objection petition. At the time of hearing, the attention of learned counsel representing the appellant was drawn to this fact, however, she only referred to the summary of objections as reproduced by the Commercial Court in para 8 of the judgment, which is extracted as under:-

> *"8. It is mainly averred that the award dated 4.5.2016 rendered by the arbitrator is wholly illegal, wrong, without jurisdiction and has been passed without complying with the provisions of the Act and is thus liable to be set aside. It is also averred that the issues arising out between the parties have not been decided by the arbitrator and thus the impugned award is liable to be set aside. It is also averred that specific objection was raised that the claim petition is bad for non-joinder and mis-joinder of necessary parties. The claim has been filed by Punsup through its District Manager, Amritsar whereas the agreement in the present case has been entered into by District Manager on behalf of Punjab State Civil Supplies through its Managing Director. The Punjab State Civil Supplies Corporation or the Managing Director has not been arrayed as a party. This fact is clear from the claim petition filed before the Arbitrator in which the claim has been filed only on behalf of District Manager, Punsup, Amritsar. Thus the claim of the claimant is liable to be dismissed. The arbitrator of its own has added the Managing Director, Punsup as a party. Thus the present award is liable to be set aside. It is also averred that the claim before the Arbitrator has not been filed by a person authorized by law. Even the authorization has been given by the board of Directors to Additional Manager, legal/Arbitrator or Additional Managing Director or Manager Personnel alongwith District Manager to sign the claim, written statements etc. whereas the claim in the present case has been filed and signed by District*

Manager only who has no authority to sign and verify the claim. Even through the issue of authorization was raised before the arbitrator, but it has not been decided and it has been stated that it is a matter of thorough investigation, which has not been conducted. Thus the impugned award is liable to be set aside on this score only. It is also averred that the award of the arbitrator deals with a dispute and decisions beyond the scope of arbitration and is thus liable to be set aside. It is an admitted fact that the capacity of the rice mill is 1.5 tonne milling capacity and thus paddy to the extent of 2250 MT was to be stored by respondent Punsup for milling and as per the capacity of the mill the applicant deposited an amount of security of Rs. 2,25,000/-. The respondent-Punsup stored paddy to the extent of 3998 MT under crop pressure and lateron asked the applicant to deposit more security which was not deposited by the applicant. As paddy more than the capacity of the mill was stored with the applicant, thus the milling could not be completed. This fact has been admitted by the respondent-Punsup witness that the capacity of the applicant miller was 1.5 tonnes and paddy to the extent of 2250 MT can be stored with the miller. Thus the award of the arbitrator is liable to be set aside on this score as well. It is also averred that the award of the arbitrator suffers from patent illegalities and is thus liable to be set aside. The award is totally against the clauses of the agreement which have not been taken into consideration. As per clause 12(a) interest at the rate of 12% can be charged in case of shortage. In the present case interest has been charged at the rate of 13% which is totally against the terms of the agreement. Thus the award of the arbitrator is liable to be set aside. It is also averred that the award of the arbitrator is against the public policy also. In the statement of account VAT, Income tax etc. has been charged. VAT is charged on the sale price. Nothing has been sold to the applicant nor any bill has been issued. No interest on VAT and other taxes can be charged. Thus the award of the arbitrator is liable to be set aside. It is also averred that the agreement of milling is a substantive piece of evidence and has to be given effect, which has not been given effect and thus the impugned award is liable to be set aside. As per clause 2 of the agreement the final receipt of paddy after completion of storage will be signed jointly by the rice miller and the District Manager, Punsup. In the present case, the final receipt has not been signed by the District Manger and a specific objection was taken in reply to the claim petition and it has also been stated in the reply that the respondent-Punsup should prove the entrustment of paddy to the miller. No evidence in this respect has been

> *led and the arbitrator gave the award without going into this aspect of the matter. Thus the impugned award is liable to be set aside. It is also averred that physical verification of the stocks lying with the miller was done and the stocks were found to be correct and no shortage was alleged. In the present case excess paddy than the capacity of the miller was stored and the shortage if any has occurred due to excess allotment and long storage period as the paddy is a perishable commodity. Thus the liability of the applicant cannot be fixed in any manner. Thus the impugned award is liable to be set aside. It is also averred that the paddy/rice lying in the premises of the applicant miller were ordered to be sold as per orders passed by the Arbitrator under section 17 of the Arbitration and Conciliation Act. It is submitted that no shortage was found during the physical verification and thus the liability of the applicant cannot be fixed in any manner. Finally, prayer has been made to set aside the impugned Award dated 04.05.2016 on the grounds mentioned in the petition."*

II. ***Arguments Addressed:***

4. This Bench has heard learned counsel for the appellant at length and with her able assistance perused the paperbook.

5. In absence of copy of objections, this Court is left with no choice but to rely upon summary of the objections as reproduced by the Commercial Court, correctness whereof is not disputed.

6. Learned counsel for the appellant has made the following four submissions:-

> i. The annual capacity of the rice mill of the appellant was 2250 metric tonnes paddy, whereas, the respondents stored 3999 metric ton paddy, hence, the agreement was illegal.
>
> ii. As per the claim petition filed before the Arbitrator, the respondent claimed the amount along with interest at the

rate of 12%, whereas, the Arbitrator has awarded the amount along with interest at the rate of 13%, which is beyond the claim of the respondents.

iii. Government of India fixed the price of raw rice at the rate of Rs.2,016.37/- per quintal, whereas, price of rice Grade 'A' was fixed as Rs.2,067.53/- per quintal. However, the Arbitrator has permitted the respondent to claim price of the rice at the rate of Rs.2,321.67/- per quintal.

iv. Not only the price of gunny bags has been excessively charged but the Arbitrator has allowed the respondent to charge Value Added Tax (VAT) at the rate of 6.05% on the same, which is perverse.

III. ***Analysis and Discussion:***

7. This Court has considered the submissions of learned counsel for the appellants.

8. The State of Punjab is known as the food basket of the country. The paddy produced by the farmers is purchased by the instrumentalities of the State and after getting the paddy dehusked from private rice millers, the rice is contributed towards the central pool for distribution under the Public Distribution System. The rice millers are expected to deliver the rice to Food Corporation of India(FCI). Every crop year, a policy is adopted by the State, which is binding upon its instrumentalities for purchase of paddy and getting it dehusked. For implementing the policy, an agreement between the instrumentalities of the State and the private rice millers like the appellant is

entered into. After the agreement the paddy for dehusking is supplied to the rice millers, who is entitled to milling charges at a predetermined rate. The dehusked rice is required to be supplied to Food Corporation of India in a staggered manner. This case pertains to the crop year 2011-2012. The execution of the agreement between the appellant and Punjab State Civil Supplies Corporation Limited (in short 'PUNSUP) is not disputed. The appellant was entrusted with 1,14,248 bags of paddy weighing 38,986.80 quintals of Grade 'A' paddy for dehusking. As per predetermined and agreed formula, the rice miller was required to deliver rice at the rate of 67% weight of the paddy i.e. 27,791.16 quintals of rice. The appellant delivered rice weighing 7,533.89 quintals of paddy while leaving a shortage of 19,257.27 quintals of rice. As per the original agreement, the delivery of rice was to be completed by 30.06.2012, which was extended upto 31.12.2012. On 08.05.2013, physical verification of the stock was carried out by the officials of the 'PUNSUP' along with government officials. 16,453.85 quintals of paddy and dehusked rice weighing 1,523.50 quintals was recovered. After the order was passed by the Arbitrator under Section 17 of the 1996 Act , the paddy and recovered rice were sold in an open auction as the paddy and rice were damaged because they are categorized as highly perishable food crops, resulting in realization of Rs.85,95,520/-. Originally, 'PUNSUP' claimed Rs.4,88,04,339/- from the appellant, which was subsequently revised to Rs.4,97,18,405/-. Reply to the revised claim was filed by the appellant.

9. The scope of interference in the award passed by the Arbitrator is delineated in Section 34 of '1996 Act', which has been interpreted by the Supreme Court in the case of ***Ssangyong Engineering & Construction Co.***

Ltd. v. National Highways Authority of India (2019) 15 SCC 131, Patel Engineering Ltd. Vs. North Eastern Electric Company, (2020) 7 SCC 167, DMRC Ltd. Vs. Delhi Airport Metro Express (Pvt. Ltd.), 2024 (6) SCC 357 and recently in ***OPG Power Journal Pvt. Ltd. Vs. Enexio Power Cooling Ltd., 2025 (2) SCC 417***. In ***OPG Power Journal Pvt. Ltd. (supra)***, the scope of the Court in an objection petition filed under Section 34 of the '1996 Act' has been explained by a Three Judge Bench in para 61 to 73, which reads as under:-

> "***61.*** *In Ssyangyong (supra), which dealt with post 2015 amendment scenario, it was observed that an argument to set aside an award on the ground of being in conflict with 'most basic notions of justice', can be raised only in very exceptional circumstances, that is, when the conscience of the court is shocked by infraction of some fundamental principle of justice. Notably, in that case the majority award created a new contract for the parties by applying a unilateral circular, and by substituting a workable formula under the agreement by another, dehors the agreement. This, in the view of the Court, breached the fundamental principles of justice, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered with the other party. However, a note of caution was expressed in the judgment by observing that this ground is available only in very exceptional circumstances and under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the court because that would be an entry into the merits of the dispute.*
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> ***62.*** *In the light of the discussion above, in our view, when we talk about justice being done, it is about rendering, in accord with law, what is right and equitable to one who has suffered a wrong. Justice is the virtue by which the society/ court / tribunal gives a man his due, opposed to injury or wrong. Dispensation of justice in its quality may vary, dependent on person who dispenses it. A trained judicial mind may dispense justice in a manner different from what a person of ordinary prudence would do. This is so, because a trained judicial mind is likely to figure out even minor infractions of law/ norms which may*

escape the attention of a person with ordinary prudence. Therefore, the placement of words "most basic notions" before "of justice" in Explanation 1 has its significance. Notably, at the time when the 2015 Amendment was brought, the existing law with regard to grounds for setting aside an arbitral award, as interpreted by this Court, was that an arbitral award would be in conflict with public policy of India, if it is contrary to:

(a) the fundamental policy of Indian law;

(b) the interest of India;

(c) justice or morality; and /or is

(d) patently illegal.

63. *As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2)(b)(ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term 'justice' with 'most basic notions' of it. In such circumstances, giving a broad dimension to this category would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out "the most basic notions of justice". Suffice it to observe, they ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/ fundamental principles of justice that it shocks the conscience of the Court.*

Morality

64. *The other ground is of morality. On the question of morality, in Associate Builders (supra), this Court, after referring to the provisions of Section 23 of the Contract Act, 1872; earlier decision of this Court in Gherulal (supra); and Indian Contract Act by Pollock and Mulla, held that judicial precedents have confined morality to sexual morality. And if 'morality' were to go beyond sexual morality, it would cover such agreements as are not illegal but would not be enforced given the prevailing mores of the day. The court also clarified that interference on this ground would be only if something shocks the court's conscience.*

Patent Illegality

65. *Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.*

66. *In Saw Pipes (supra), while dealing with the phrase 'public policy of India' as used in Section 34, this court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.*

67. *In Associate Builders (supra), this Court held that an award would be patently illegal, if it is contrary to:*

(a) substantive provisions of law of India;

(b) provisions of the 1996 Act; and

(c) terms of the contract.

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a)51 of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. *In Ssangyong (supra) this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to 'public policy' or 'public interest', cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award*

Perversity as a ground of challenge

69. *Perversity as a ground for setting aside an arbitral award was recognized in Western Geco (supra). Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.*

70. *In Associate Builders (supra) certain tests were laid down to determine whether a decision of an arbitral tribunal could be considered perverse. In this context, it was observed that where:*

> *(i) a finding is based on no evidence; or*
>
> *(ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or*
>
> *(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. *In Ssangyong (supra), which dealt with the legal position post 2015 amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence in as much as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.*"

10. With respect to the first submissions, it may be noted that the appellant does not dispute allocation of 3,999 metric tonnes of paddy

pursuant to an agreement. Receipt of paddy is admitted by the appellant in writing dated 05.12.2011. It has come on record that originally, the appellant was allocated 2,250 metric tonnes of paddy, however, subsequently on request, additional paddy was allotted. It is not the case of the appellant that they were forced to accept more paddy than their capacity. Moreover, learned counsel for the appellants has failed to draw the attention of the Court as to how such contract would be in conflict with the Public Policy of India as explained in Explanation I of Section 34(2) of the '1996 Act'. The Parliament while explaining the scope of the public policy has given restricted meaning of public policy as explained in clause (i) to (iii) in Explanation I. Hence, the first submission lacks merit.

11. The second submission of learned counsel for the appellants does not have substance because originally the respondent claimed the amount along with interest at the rate of 12%, however, the same was revised by the respondent as per letter issued by the Punjab Government on 18.02.2013, which was annexed as Annexure C-9 with the revised claim. The appellant filed the reply. The amount along with interest at the rate of 13% was claimed as per instructions issued by the Government of Punjab, which is binding between the parties. It is not the case of the appellant that the Government of Punjab had no authority.

12. With reference to third submission of learned counsel for the appellants, it may be noted that the contract is between 'PUNSUP' on the one hand and the appellants on the other hand. The price fixed by Government of India shall not govern the field. Moreover, the price notified by Government of India is with respect to the year 2011, whereas, in the

present case, the deficiency was found in the year 2013. The price of the rice has been charged as per the rate fixed by Punjab Government. Additionally, this objection was never taken by the appellant either before the Arbitrator or in the objection petition filed under Section 34 of the Arbitration Act. The appellant cannot be permitted to challenge the judgment passed by the Commercial Court on an objection, which was never taken either before the Arbitrator or before the Court.

13. With respect to last submission of learned counsel for the appellant, it may be noted that the paddy was supplied in gunny bags. It has been found by the Arbitrator that the appellant has retained 17,010 gunny bags (‘B’ class’), which have been charged at the rate of Rs.25.27/- per bag, whereas, 82,120 (‘A’ class) gunny bags have been retained, which has been charged at the rate of Rs.42.11/- per bag. Moreover, 50 excess gunny bags have been retained for which amount has been charged. Value Added Tax (VAT) as payable to the competent authorities on the aforesaid gunny bags has been charged. Learned counsel for the appellant has failed to draw any perversity in the aforesaid amount. In fact, the word ‘perversity’ has been explained by the Three Judge Bench of the Supreme Court in ***Patel Engineering Ltd. (supra)***. However, the appellants’ case is not covered by the same.

IV. ***Decision:***

14. Keeping in view the aforesaid discussion, no ground to interfere with the judgment passed by the Commercial Court is made out.

15. The appeal has been heard on merits and decided, hence, no further order on an application for condoning the delay in filing and refiling the appeal is required to be passed.

16. Dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

08th July, 2025 **(ANIL KSHETARPAL)**
Ayub **JUDGE**

(ROHIT KAPOOR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No